

ARTICLE II. TREE PRESERVATION, PROTECTION AND REPLACEMENT

Sec. 14-26. Purpose and intent.

(a) *Purpose.* It is the purpose of this article to promote and protect the public health, safety, the environment, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees on city-owned property and public rights-of-way within the corporate limits of the City of Macon, and on city property outside the corporate limits.

(b) *Intent.* It is the intent of the Mayor and Council of the City of Macon that the terms of this article shall be construed so as to promote:

(1) The planting, maintenance, restoration, and survival of desirable trees within the public rights-of-way and on city-owned property within the city; and

(2) The protection of community residents from personal injury and property damage, and the protection of the City of Macon from property damage, caused or threatened by the improper planting, maintenance, or removal of trees located in the public rights-of-way and on city-owned property.

(3) An increase in holding capacity of water in the land, the reduction of air pollutants and carbon monoxide levels in the air, the minimization of increased temperature on lands with tree cover, the aesthetic qualities of the community, the maintenance or increase of property values, the prevention of siltation of the rivers, canals, ditches, and other waterways, the aesthetic quality provided by the natural tree cover on tracts of land being converted to urban development, and the prevention of soil erosion.

(Ord. No. O-01-0032, 6-21-01)

Sec. 14-27. Jurisdiction.

The provisions of this article shall apply to all public rights-of-way, and city-owned property within the corporate limits of the City of Macon, and all city-owned property located in the county.

(Ord. No. O-01-0032, 6-21-01)

Sec. 14-28. Definitions.

As used within this article, the following terms shall have the meanings set forth in this section: *Arboricultural Specifications and Standards of Practice for the City of Macon* (hereinafter, "Arboricultural Specifications Manual, or abbreviated as, ASM"). The ASM is a manual prepared by the City Forester pursuant to this article containing regulations and standards for the planting, maintenance, protection, and removal of trees upon the public rights-of-way and city-owned property.

Caliper. The diameter or thickness of the main stem of a young tree or sapling as measured at six (6) inches above the ground level. This measurement is used for nursery grown trees having a diameter of four (4) inches or less.

City forester. The agent of the City of Macon who is responsible for the administration of these standards and having the primary responsibilities of administration and enforcement of the City of Macon Tree Preservation, Protection, and Replacement Ordinance.

City-owned property. Property within the city limits of Macon or city-owned property located in the county, and

(1) Owned by the city in fee simple absolute, or

(2) Implied or expressly delegated or dedicated to the public for present or future use for purposes of vehicular or pedestrian traffic, or for public easements.

Clearing. The removal of woody vegetation of two (2) inches diameter or greater.

Diameter. The diameter or width of the main stem of a tree as measured four and one-half (4.5) feet above the natural grade at the base of a tree. Whenever a branch, split in the main trunk, limb, defect or abnormal swelling of the trunk occurs at this height, the diameter shall be measured at the nearest point above or below four and one-half (4.5) feet at which a normal diameter occurs.

Drip line. A vertical line extending from the outer surface of a tree's branch tips down to the ground.

Imminent danger. An appearance of threatened and impending injury or loss of property as would put a reasonable and prudent man to his instant defense.

Land disturbing activity. Excavation or construction work within the drip line of any tree in or upon any public property and/or change in natural drainage, excavation of any ditches, tunnels, trenches or laying of any drive within the root protection zone of any tree having all or any portion of its trunk in or upon any city property.

Person. Any person, firm, partnership, association, corporation, company, or organization of any kind, including public utilities and governmental entities.

Protective barrier. The minimum tree protection device shall be as described in the ASM.

Property owner. The record owner or contract purchaser of any parcel of land.

Responsible person. The person who removes a tree from city-owned property or a public right-of-way which must be replaced and maintained pursuant to section 14-31 of this article.

Tree. Any self-supporting woody perennial plant which has a trunk diameter of two (2) inches or more when measured at a point six (6) inches above the ground level and which normally attains an overall height of at least ten (10) feet at maturity, usually with one (1) main stem or trunk, but may have multiple trunks at the base, and many branches which contains lignin (wood) in the stems and limbs.

Specimen tree. A tree which has been determined by the city forester to be of high value because of its type, size, age or other professional criteria, and has been so designated in the official records of the city.

Tree protection zone. The area surrounding a preserved or planted tree that is essential to that tree's health and survival, protected within the guidelines of this article, and is regulated and illustrated by the ASM.

Tree commission. The entity created and described in section 14-28 of this Article.

(Ord. No. O-01-0032, 6-21-01; Ord. No. O-05-0023, Pt. 1, 5-23-05)

Sec. 14-29. Tree commission; establishment; composition; appointment of members; duties.

(a) The establishment, composition, and appointment of members. There shall be created a commission to be known and designated as the "tree commission" composed of fourteen (14) people. Seven (7) of said members shall be appointed by the mayor with the confirmation of the council. Of the seven (7) members appointed by the mayor, one (1) shall be a representative of any of the historic districts of Macon, three (3) shall be citizens at large, one (1) shall be a contractor or developer, and two (2) shall be persons professionally trained in the field(s) such as urban forestry/arboriculture, botany, horticulture, or landscape architecture. The eighth member shall be the director of the department of parks and recreation, or his designee, who shall be an ex-officio member; the ninth member shall be the city forester who shall be an ex-officio

member; the tenth member shall be a member of the Georgia Forestry Commission, or a designee, who shall be an ex-officio member; the eleventh member shall be the Director of the Keep Macon-Bibb Beautiful Commission, or a designee, who shall be an ex-officio member; the twelfth member shall be a representative of the Georgia Power Company who shall be an ex-officio member; the thirteenth member shall be the Director of the County Extension Service, or a designee, who shall be an ex-officio member; and the fourteenth member shall be the Director of the Macon-Bibb County Planning and Zoning Commission, or a designee, who shall be an ex-officio member. No ex-officio member shall have the right to vote on commission matters. All members of the commission shall serve without pay. The seven (7) members appointed by the mayor shall be appointed as follows: two (2) for two (2) years, three (3) for three (3) years, and three (3) for four (4) years, and shall serve until their successors are duly appointed and confirmed by council. Successors to those members appointed by the mayor shall thereafter be appointed for terms of four (4) years. Vacancies caused by death, resignation, or otherwise, shall be filled for the unexpired term in the same manner as the original appointments are made. The mayor may recommend removal or replacement of a member of the commission for nonperformance of duty. Nonperformance of duty is defined herein to mean three (3) consecutive unexcused absences from commission meetings.

(b) *Duties of the tree commission.* The duties of said "tree commission" shall be as follows:

(1) To study the problems and determine the needs of the municipality in connection with its tree planting, maintenance and removal programs and the urban forestry management plan.

(2) The tree commission shall provide consultation and assistance to the city forester on any matter pertaining to the "CITY OF MACON TREE PRESERVATION, PROTECTION, AND REPLACEMENT ORDINANCE" and its enforcement. The topics under which this advice and consultation may be given may include, but are not limited to, any of the following:

a. amendments to the CITY OF MACON TREE PRESERVATION, PROTECTION, AND REPLACEMENT ORDINANCE, and alterations or revisions to the ASM and alterations or revisions of the urban forestry management plan;

b. policy concerning selection, planting, maintenance, and removal of trees within the city, on city-owned property or public rights-of-way;

c. establishment of educational and informational programs to encourage proper maintenance of trees.

(3) The tree commission, upon receipt of a written appeal from any person who disagrees with a decision of the city forester shall hear all issues of the disputes which arise between the city forester and any such person whenever those issues involve matters of the interpretation or enforcement of the ASM, the urban forestry management plan, or of the interpretation or enforcement of this article. The decision of a majority of the appointed members of the tree commission with regard to such dispute shall be final. Any person who disagrees with the decision of the tree commission may appeal said decision to municipal court as set forth in section 14-37.

(4) To assist the Administration of the City of Macon, as well as city council members and citizens of the city, in the dissemination of news and information regarding the protection, maintenance, removal and planting of trees on city-owned property or public rights-of-way, and to make such recommendations from time to time to the mayor and council as to desirable legislation concerning the tree program and activities for the City of Macon.

(5) To provide at least quarterly meetings and special meetings at which the subject of trees may be discussed by a quorum of the members of the commission, officers, and personnel of the city, and all other persons interested in the tree program.

(6) That within a reasonable time after the appointment of said commission and the approval of the members thereof, upon call of the mayor, said commission shall meet and organize by the election of a chairperson and the appointment of a secretary. The said commission shall then provide for the adoption of rules and procedures and for the holding of regular and special meetings as said commission shall deem advisable and necessary in order to perform the duties set forth.

(7) To assist the planning and zoning commission in the enforcement of regulations and procedures adopted by the P&Z commission for the purpose of regulating trees on private property. The provisions of this article shall not be binding on or affect the commission's regulations and procedures.

(Ord. No. O-01-0032, 6-21-01; Ord. No. O-05-0023, Pt. 2, 5-23-05)

Sec. 14-30. City forester; duties; authority.

(a) *Duties.*

(1) The city forester is hereby charged with the duty to enforce this code section.

(2) The city forester, with the assistance of the tree commission, shall develop, and each subsequent year, update, the urban forestry management plan. The plan shall outline the urban forestry program activities for a minimum of the next five (5) years. This plan shall describe the urban forestry activities to be undertaken by the city, the reasons for those activities, the possible funding source(s), the means of accomplishing the activities, the alternatives available to the city to fund or accomplish the activities, the projected date of completion, and the impact if the activities are not completed. Activities may include but are not limited to street tree inventory, planting, tree removal, personnel training, beautification projects, and educational projects.

(3) The city forester, with the assistance of the tree commission, shall develop and periodically review and revise, as necessary, the ASM. This manual shall contain regulations and standards for the planting, maintenance, tree protection zones, and removal of trees upon city-owned property, and the public rights-of-way.

(4) The city forester shall cause the urban forestry management plan and the ASM, and all revisions and amendment to it, to be published and promulgated and shall cause one (1) copy of the ASM, and all revisions and amendments to it, to be available for public inspection at the office of the city clerk. Notice that such information is available for public inspection shall be published in a newspaper of general circulation within Bibb County at least one (1) weekday of each of four (4) consecutive weeks immediately following the initial availability of the ASM, or revisions or amendments thereto. The ASM, and any revisions and amendments thereto, shall become effective upon approval by the mayor and city council. The ASM, once passed by council, becomes effective upon the mayor signing the same. Copies shall also be made available to the Macon-Bibb County Planning and Zoning Commission and Engineering Department of the City of Macon.

(5) The city forester shall maintain on file in the office of the city clerk for any interested persons, copies of the tree ordinance, information about the activities of the tree commission, copies of the ASM, and copies of the urban forestry management plan.

(6) The city forester shall administer the urban forestry management plan, the City of Macon Tree Preservation, Protection, and Replacement Ordinance, and the provisions of the ASM.

(7) The city forester shall perform whatever acts are necessary, including the planting and maintenance of trees and the removal of undesirable trees located on public rights-of-way or city-owned property to conform to the urban forestry management plan, the ASM, and this article. Pursuant to this duty, the city forester, in accordance with normal city procedures regarding contracts, may arrange contractual agreements.

(8) The city forester shall review and issue a written decision on all requests for tree removal as are required by this ordinance. The forester shall obtain, as a condition precedent to the issuance of an approval, the written plan and agreement of each person who applies that he or she will comply with the requirements of this ordinance, the Urban Forestry Management Plan, and the tree replacement requirements. The plan and agreement shall include a completion date. The forester shall have the right to inspect all work performed in public rights-of-way or city-owned property.

(9) The city forester shall establish a program of public information and education that will encourage the planting, maintenance, protection, or removal of trees on private property in furtherance of the goals of the urban forestry management plan.

(10) The city forester shall assist the Macon-Bibb County Planning and Zoning Commission on any actions affecting the planting, maintenance, protection, or removal of trees in the city under the commission's jurisdiction.

(11) No person shall unreasonably hinder, prevent, delay, or interfere with the city forester or his agents while engaged in the execution or enforcement of this article.

(b) *Jurisdiction.* The city forester shall have the authority to regulate the protection, maintenance, removal and planting of trees on streets, parks, public places and other tree protection zones, on public rights-of-way and city-owned property within the city limits or on any city-owned property outside the city limits. Such authority shall include the assurance that this article is enforced and the issuance of citations for the violation of these provisions.

(Ord. No. O-01-0032, 6-21-01; Ord. No. O-05-0023, Pt. 3, 5-23-05)

Sec. 14-31. General protection and regulation of trees on city-owned property and public rights-of-way.

(a) Prior to any land disturbing activity within the tree protection zone, as defined in section 14-28, a person who owns property adjacent to city-owned property or the public rights-of-way shall obtain approval of the city forester. The property owner shall consult with and obtain approval from the city forester prior to removing, transporting, destroying, breaking, cutting, spraying, defacing, or otherwise disturbing any tree located on adjacent city-owned property or in the tree protection zone. The city forester shall respond to such request as expeditiously as possible, but in any event within sixty (60) days. If the city forester has not responded within sixty (60) days, the city forester will be presumed to have approved such request, unless otherwise informed. The property owner shall not allow any gaseous, liquid, chemical or solid substance which is harmful to trees to come into contact with, set fire to, or burn any tree on the adjacent city-owned property or any adjacent public rights-of-way.

(b) No person shall cut, damage, carve, top, attach or place any rope, wire, sign, poster, handbill, or any other thing on any tree or woody shrubs growing in the public right-of-way or on city-owned property without consulting and obtaining approval from the city forester.

(c) No person shall directly or indirectly place stone, cement, or any substance in or about the tree(s) growing in public rights-of-way or on city-owned property which will impede the free

entrance of water or air to the root system of such trees without consulting and obtaining approval from the city forester.

(d) No person shall attach or place any rope, wire, sign, poster, handbill, or any other thing on any tree or woody shrub growing in the public right-of-way or on city-owned property without consulting and obtaining approval from the city forester.

(e) All actions required to preserve and protect trees, and to prevent soil erosion affected by this ordinance shall be performed in accordance with the Arboricultural Specifications and Standards of Practice Manual, or ASM.

(f) This section shall not be interpreted to prohibit the city, utility companies (such as gas, electricity, cable, and telephone) and such other service providers from constructing and maintaining easements, safe clearances and/or rights-of-way for utility lines. All utilities and service providers shall notify the city forester in writing of any land-disturbing activity affecting trees covered by this article prior to conducting such activity, except in cases of an emergency. All companies, suppliers and/or agencies removing trees shall execute an agreement recognizing the need to minimize the cutting, trimming or removal of trees which do not frustrate or substantially interfere with the supply of service.

(g) The city forester's permission must be obtained prior to planting any trees in public rights-of-way or on any city-owned property. Certain types of trees are inappropriate for planting along public rights-of-way. Trees placed on such property without the permission of the city forester shall be subject to removal at the expense of the person who planted such trees.

(Ord. No. O-01-0032, 6-21-01; Ord. No. O-05-0023, Pt. 4, 5-23-05)

Sec. 14-32. Tree replacement requirements.

(a) Street rights-of-way trees that are in sound condition but are to be removed to facilitate construction of driveways, utilities, curbs, sidewalks, or street widening must be replaced using the caliper and/or diameter as the replacement factor as specified in the ASM. Upon the removal of each tree, whether approved by request or unlawful, this article requires mitigation for trees removed with replacement trees of equal value and at least two-inch caliper. The aggregate or combined caliper inches of replacement trees shall equal the total diameter inches (dbh) of the tree(s) removed. Where the city forester can not determine the dbh because of prior removal of a tree, the city forester shall determine the dbh in accordance with the latest revision of "Estimating DBH from stump diameter for 15 Southern Species" as published by the U.S. Forestry Service. Where the species removed is not included in the above publication, the city forester shall select a species closest to the type removed.

(b) Any person responsible for replacing removed tree(s) shall also be responsible for maintaining the health of all replacement trees for a period of one (1) year from the date of planting. The person shall replace any tree that dies during this time period.

(c) Any person who violates the tree replacement requirements or who fails to comply shall be charged the cost of replacement of said tree or at least five hundred dollars (\$500.00), whichever is greater. The replacement value of trees shall be determined in accordance with the latest revision of "Guide for Plant Appraisal" as published by the International Society of Arboriculture.

(d) Replacement tree species and number shall be determined by the city forester. Replacement shall be reasonably confined to the area from which the city's tree was removed. Acceptable replacement could include planting on public rights-of-way, city-owned property within the city, or private property with the approval of the city forester.

(e) Where the city forester has determined that irreparable damage has occurred to tree(s) on public rights-of-way, on city owned property or within a tree protection zone, the tree(s) must be removed and replaced by the responsible person(s) in accordance with the tree replacement requirements.

(Ord. No. O-01-0032, 6-21-01)

Sec. 14-33. Public nuisances.

(a) The following are hereby declared public nuisances under this article: any tree or portion thereof whether located on city-owned property, public rights-of-way or on private property which:

(1) By reason of location or condition constitutes an imminent danger to the health, safety, or welfare of the general public;

(2) Obstructs the free passage of pedestrian or vehicular traffic or which obstructs a street light or street sign;

(3) Dangerously obstructs the view of motorists as such may be determined by the city traffic engineer pursuant to this article.

(b) Right to inspect. The city forester shall have the authority to enter onto private property whereon there is located a tree or portions thereof, that is reasonably suspected to pose an imminent danger or a public nuisance.

(c) Abatement. All nuisances described within this article shall be abated pursuant to Chapter 12 of this Code. When a dead or diseased tree which is alleged to constitute a nuisance is brought to the attention of the city forester, the forester, in his or her discretion, may submit a written opinion to the director of the economic and community development department or the director the department of inspection and fees, whichever department has appropriate code enforcement jurisdiction over the property upon which such nuisance is located. Upon receiving a written opinion from the city forester that any tree or part thereof is a nuisance, the director, or his designee, shall commence nuisance abatement proceedings pursuant to Chapter 12 of this Code. In such cases where danger to the public is imminent, the director shall have the right, but not the obligation, to enter the property and abate the nuisance.

(Ord. No. O-01-0032, 6-21-01)

Sec. 14-34. Notice, violation and civil penalty.

(a) If any person violates this article or fails to comply with any provision of this article, the city forester, or his designee, shall notify the person of the violation in writing. Said notice shall be delivered in person or by certified mail. The notice shall set forth the actions to be taken to correct the violation within fifteen (15) days. Failure of any person to correct the violation shall constitute an offense of this code. The city forester may grant a written extension not to exceed sixty (60) days. Any person who disagrees with the finding of the city forester may, prior to the expiration of the fifteen (15) period, or any extension, file a written appeal with the tree commission. An appeal shall be considered filed if delivered in person or certified mail to the tree commission.

(b) If the person notified fails to correct the violation or file an appeal with the tree commission within the allowable time period, the city forester shall issue a summons so charging the person notified and requiring such person to appear in municipal court for a hearing at a given time, place and date. Said summons shall be in the form of a written complaint setting forth the

violation and the identity of the person complained against. Said summons shall be delivered in person or by certified mail.

(c) If the court determines that the person summoned did violate this ordinance, the court shall order mitigation as prescribed by (d) of this section. In addition to mitigation, the court may impose a fine not to exceed five hundred dollars (\$500.00) for each violation of the article. Each day during which any violation of the provisions of this article shall occur or continue shall be a separate violation.

(d) If, as the result of the violation of any provision of this article, the injury, mutilation, or death of a tree located on city-owned property or public rights-of-way is caused, the cost of repair or replacement of such tree shall be borne by the party in violation. The replacement value of trees and shrubs shall be determined in accordance with the tree replacement requirements. (Ord. No. O-01-0032, 6-21-01)

Sec. 14-35. Emergencies.

In case of official emergencies, such as windstorms, ice storms, or other disasters, the requirements of this division shall be waived so that the requirements of this article would in no way hinder private or public work to restore order in the city. This work shall follow maintenance standards as outlined by the city forester.

(Ord. No. O-01-0032, 6-21-01)

Sec. 14-36. Moving large objects.

No person shall move any building or other large object which may injure trees or parts thereof in public rights-of-way or on city-owned property, without first having obtained the approval of the city forester.

(Ord. No. O-01-0032, 6-21-01)

Sec. 14-37. Appeals.

An appeal of a decision of the tree commission shall be taken to the municipal court. The municipal court, upon receipt of an appeal, shall have the authority and duty to consider and act upon the application.

(Ord. No. O-01-0032, 6-21-01)

Sec. 14-38. Legality of article and parts thereof.

Should any section, clause, or provisions of this article be declared by the courts to be invalid, the same shall not affect the validity of the article as a whole, or parts thereof, other than the part so declared to be invalid.

(Ord. No. O-01-0032, 6-21-01)

Sec. 14-39. Effective date.

This article is hereby declared to be of immediate necessity for the preservation of public peace, health, and safety, and shall be in full force and effective ninety (90) days from and after its passage and publication as provided by the law and this article.

All ordinances, including the beautification tree committee ordinance, adopted November 12, 1987, or parts of other ordinances in conflict herewith are hereby repealed.

(Ord. No. O-01-0032, 6-21-01)